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4 Robert G. Nadalin, Esq.
5 Cal. State Bar No. 222489
6 Attorney for Ms. Roshni Sundaram

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 Roshni Sundaram,

10 Plaintiff,

11 v.

12 Michael Chertoff, Secretary,
13 Department of Homeland Security,

14 Jonathan Scharfen, Acting Director,
15 Citizenship and Immigration Services,

16 Gerard Heinauer, Director
17 Nebraska Service Center
Citizenship and Immigration Services,

18 Paul M. Pierre, District Director,
19 San Diego District, Citizenship and
20 Immigration Services,

21 Michael B. Mukasey,
22 Attorney General of the United States,

23 Robert S. Mueller, III,
24 Director, Federal Bureau of Investigation,

25 Defendants.

Civil No. **08 CV 1131 DMS BLM**

Agency No. A95 583 083

COMPLAINT FOR A WRIT
IN THE NATURE OF MANDAMUS

26 Plaintiff, by her attorney, complaining of Defendants, alleges as follows:
27

28 1.) Plaintiff, Roshni Sundaram, is an individual and applicant for adjustment of status
who currently resides in the city of San Diego, which is within the jurisdiction of this

FILED

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U.S. DISTRICT COURT OF CALIFORNIA

BY V. NIT DEPUTY

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1 Court. Plaintiff's claim to relief arises under 8 U.S.C. § 1255(a).

2 2.) Defendant Michael Chertoff is the Secretary of Homeland Security (DHS), Jonathan
3 Scharfen is the Acting Director of United States Citizenship and Immigration Services
4 (USCIS), Gerard Heinauer is the Director of the Nebraska Service Center of USCIS, Paul
5 M. Pierre is the District Director of the San Diego District of USCIS, Michael B.
6 Mukasey is the Attorney General of the United States, and Robert S. Mueller, III, is the
7 Director of the Federal Bureau of Investigation. All defendants are sued in their
8 professional capacities.
9

10 3.) The Court has jurisdiction of this action pursuant to 8 U.S.C. § 1255(a), 8 U.S.C. §
11 1361, 28 U.S.C. § 1331, 28 U.S.C. § 1651, 5 U.S.C. § 701 et seq., and 28 U.S.C. § 2201
12 et seq., and relief is requested pursuant to these statutes.
13

14 4.) On June 4, 2002, Plaintiff applied for adjustment of status under 8 U.S.C. § 1255(a)
15 with the USCIS Nebraska Service Center in Lincoln, Nebraska. The internal identifiers
16 assigned to her case are: Roshni Sundaram, A#095-583-083, LIN-02-214-54210.
17

18 5.) Her husband, Naveen Dakappagari, filed an adjustment of status application
19 concurrently with his spouse at the same time. His case is referenced by: A#095-565-926,
20 LIN-02-214-54149. His adjustment application was approved on April 28, 2004 based on
21 the I-140 petition approved on his behalf on May 2, 2002, which is referenced by LIN-02-
22 098-52311.
23

24 5.) Plaintiff's biometrics, including a photo and fingerprints, were taken at the USCIS
25 application support centers on December 19, 2002, on February 13, 2003 and most
26 recently on August 8, 2006.

27 6.) Numerous inquiries regarding Ms. Sundaram's pending case have been submitted to
28

1 USCIS. The USCIS has responded to the inquires, and each response instructs the
2 applicant to wait an additional 6 months before contacting USCIS again about the case.
3 At this point in time, more than 12 six-month periods have passed, but the case remains
4 unadjudicated.
5

6 7.) There are fundamental problems with the way in which Defendants are processing Ms.
7 Sundaram's case. Plaintiff intends to seek discovery to confirm facts which appear to be
8 in dispute. In response to Plaintiff's inquiries, Defendants assert that the case is
9 undergoing "additional review," yet the application remains pending more than 6 years
10 after it was filed. It is Plaintiff's belief that no action is taking place on her case, or that it
11 has somehow fallen off the regular processing track, or that the physical file has been lost.
12 It is not clear why this case has been pending for more than 6 years. Questions include
13 whether or not Defendant USCIS is in physical possession of the paper file, when the
14 security check process was started, how defendant USCIS checks to see if the process has
15 been completed, whether there is a quality control process applicable to following up on
16 long delayed cases.
17

18
19 12.) Plaintiff is aware that in similar previous cases, Defendants have asserted that it
20 would somehow be unfair for them to take action on a specific long delayed case because
21 other applicants were also waiting in line for adjudication. Plaintiff believes it is relevant
22 to her situation to know how many other cases have been pending with Defendants for 72
23 months or longer. Defendant USCIS posts on its website that it is completing adjustment
24 of status cases filed as of July 28, 2007. Plaintiff believes that Defendant USCIS is
25 stating its true processing time as July of 2007 and therefore concludes that her long
26 delayed case is exceptional and unique. For a reason unknown at this time, it appears that
27
28

1 Defendants are not actively processing her case and may not be conducting active follow-
2 up in the adjudication of this matter. Thus, significant issues of fact may be in dispute in
3 this case as Plaintiff maintains a reasonable belief that her case is being handled differently
4 than other adjustment of status applicants who filed in 2002.

5
6 13.) Plaintiff is also aware that in similar previous cases, Defendants have asserted that
7 concerns related to national security sometimes result in long process delays. While
8 Plaintiff waits for the adjudication of her case, she continues to be physically present
9 inside the U.S. Assuming arguendo that Plaintiff were a threat to the national security of
10 the United States, a delay in her case would not make America safer because for the
11 entirety of the process she would remain free to travel around the country. Contrary to
12 what Defendants may assert, concerns regarding national security lean strongly in favor of
13 completing the adjudication of pending applications as quickly as possible. Plaintiff
14 believes that asserting national security as a concern is a pretext. Plaintiff intends to
15 pursue discovery processes to ascertain the true reason why her case has not been able to
16 be concluded within the last 72 months.

17
18
19 14.) Plaintiff asserts that Defendants have a duty to adjudicate this application within a
20 reasonable period of time. They have failed to complete these duties for a period of more
21 than 6 years. Id.

22 15.) Plaintiff has exhausted her administrative remedies.

23
24 16.) Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in
25 accordance with the law.

26 17.) Further, Defendants are in violation of the Administrative Procedures Act, 5 U.S.C.
27 § 701 et. seq., are unlawfully withholding or unreasonably delaying action on Plaintiffs'
28

1 application and have failed to carry out the adjudicative functions delegated to them by
2 law with regard to Plaintiff's case.

3 18.) Plaintiff is suffering real and specific harm directly caused by Defendants' refusal to
4 act. The harms suffered include, the significant financial burden incurred in renewing her
5 employment authorization every year, severe restrictions on her ability to travel outside of
6 the U.S., and a significant delay in the time that it may take her to become a U.S. citizen,
7 which would allow her to vote in U.S. elections and to sponsor family members to come
8 to the U.S. Plaintiff may consider amending her complaint in the future if the discovery
9 process yields information understood to show that her case is intentionally being delayed
10 for unlawful reasons, in contrast to a delay caused by apathy or an unintentional failure to
11 complete assigned duties.
12

13
14 WHEREFORE, Plaintiff prays:

15 A. That the Defendants be ordered to have their agents process this case to a conclusion.

16 B. For reasonable attorney's fees, and

17 C. For such other and further relief as to this court may deem proper.
18

19
20 Dated: June 25, 2008

21
22 

23 Robert G. Nadalin
24 Attorney for Roshni Sundaram
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Roshni Sundaram

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Robert G. Nadalin, The Law Offices of Robert Nadalin
P.O. Box 124594, San Diego, CA 92112 Tel. 619-334-8875

DEFENDANTS

Michael Chertoff, Secretary, Department of Homeland Security, Jonathan Scharfen, Acting Director, Citizenship and Immigration Services, Gerard Heinauer, Director, Nebraska Service Center, Citizenship and Immigration Services, Paul M. Pierre, District Director, San Diego, District, Citizenship and Immigration Services, Michael B. Mukasey, Attorney General of the United States, Robert S. Mueller, III, Director, Federal Bureau of Investigation
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys (If Known)

'08 CV 1131 DMS BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

8 USC § 1255(a), 28 USC § 1331, 28 USC § 1361

Brief description of cause:

Action in mandamus to compel administrative action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/24/2008

[Signature]

FOR OFFICE USE ONLY

RECEIPT # 15220 AMOUNT \$ 350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC 6/25/08

CR

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152240 - TC

**June 25, 2008
08:36:38**

Civ Fil Non-Pris

USAO #: 08CV1131

Judge.: DANA M SABRAW

Amount.: \$350.00 CK

Check#: BC1155

Total-> \$350.00

FROM: ROSHNI SUNDARAM

VS.

MICHAEL CHERTOFF ET AL.